IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Revision No.705 of 1996

Date of Decision: December___, 2007

Maghar Singh ... Petitioner

Versus

State of Punjab ... Respondent

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CORAM: HON'BLE MR. JUSTICE HARBANS LAL

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Present: Mr. Sachin Sharma, Advocate
for the petitioner.

Mr. A.S. Brar, DAG Punjab
for the State.

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HARBANS LAL, J

This revision has been directed against the judgment/order of sentence dated 22.3.1995 passed by the Court of learned Judicial Magistrate Ist Class, Dhuri, whereby he convicted and sentenced the accused-petitioner to undergo rigorous imprisonment for nine months and to pay a fine of Rs.1,000/- or in default to further undergo rigorous imprisonment for two months, as well as the judgment dated 14.8.1996 rendered by the Court of learned Sessions Judge, Sangur, whereby he dismissed the appeal.

Succinctly put, the facts of the prosecution case are that on 31.8.1991 at about 3.30 P.M., Shamsher Singh, Sub-Inspector, Police Station Sherpur received a secret information that the accused was in

possession of large quantity of licit liquor and has kept the same in his house for sale. This information being reliable, a formal FIR, Exh. PD was registered. The above mentioned Sub-Inspector, accompanied by other Police Officials, conducted raid at the house of the accused in the area of Village Sherpur. Sukhdev Singh Sarpanch was joined on reaching the village. The accused was found present out side his house. On interrogation, he disclosed to them that he had kept concealed 5 boxes containing licit liquor under the gunny bags behind a box in his house, which was to his exclusive knowledge and the same could be got recovered. His disclosure statement was jotted down. Pursuant thereto, he got recovered 5 boxes each containing 12 bottles of licit liquor. Sample was drawn out of the contents of each bottle. Thereafter, the sample as well as the bottles were sealed and taken into possession. On return to the Police Station, the case property was deposited with seals intact with MHC. On receipt of Chemical Examiner's report and after completion of investigation, the charge sheet was laid in the Court for trial of the accused.

The accused was charged under Section 61(1)(a) of Punjab Excise Act, 1914, to which he did not plead guilty and claimed trial.

To bring home guilt against the accused, the prosecution examined Shamsher Singh, Sub-Inspector, PW-1, his name sake, SI, PW-2, and closed its evidence by tendering the affidavits of formal witnesses, Exh. PB and PC and by giving up Sukhdev Singh as having been won over by the accused.

When examined under Section 313, Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and stated that he was brought to

the Police Station, Sherpur on an application of one Triloki Nath. In defence, he examined Jagga Singh,DW-1 and Bhagwan Singh, DW-2.

After hearing the learned APP for the State, learned defence counsel and examining the evidence, the learned trial Court convicted and sentenced the accused, as noticed at the outset. Feeling dissatisfied with the same, he preferred an appeal which was dismissed by the Court of learned Sessions Judge, Sangrur.

I have heard Mr. Sachin Sharma, learned counsel for the petitioner as well as Mr. A.S.Brar, learned Deputy Advocate General, Punjab.

Mr. Sachin Sharma, Advocate, on behalf of the petitioner, urged with great eloquence that as transpires from the prosecution evidence, the recovery was allegedly effected in consequence of house search in derogation of the provisions of Section 100 (4) of the Code of Criminal Procedure.

To overcome this submission, Mr. A.S.Brar, learned Deputy Advocate General, Punjab, maintained that it is not a case of house search, rather the recovery was got effected in pursuance of disclosure statement and that being so, the provisions of the aforesaid Section, do not come into play in this case. There is substance in this submission.

As emanates from the evidence of SI Shamsher Singh,PW-2, in pursuance of his disclosure statement, the accused got recovered 60 bottles of licit liquor. So, obviously it is not a case of house search. If the Police had carried out house search and recovered the aforesaid bottles of licit liquor, only then it could have been described to be a case of house search. Consequently,the provisions of Section 100 (4) ibid are not applicable to the

facts of this case. More to the point, the recovery was effected in the presence of Sukhdev Singh Sarpanch, a public witness. Of course, he has not been examined on the pretext of his having been won over by the accused but as ruled in re: **Masalti** v. **State of Uttar Pradesh,** AIR 1965 SC 202, undoubtedly the duty of the prosecution is to lay before the Court all material evidence available to it which is necessary for unfolding its case but it would be unsound to lay down it as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised.

The next argument raised by Mr. Sachin Sharma, counsel for the petitioner, is that as per statement of Shamsher Singh, PW-1, empty nips were procured through Balbir Singh Constable from Police Station whereas according of Shamsher Singh, PW-2, the same were brought by Harbant Singh, Head Constable and further as testified by the former, the Police Party remained at the spot for 2-1/2 to 3 hours, whereas according to the latter, they stayed there for 2-1/2 hours and, thus, obviously both these P.Ws are discrepant and contradict each other on very material points. This contention carries no weight. Of course, these discrepancies are very much there on the record but the same are too minor to take serious note of. As is well known, the human memory is prone to faint with the efflux of time. The discrepancies catalogued above are of such a nature which can creep in the memory of every normal man. More so, the faculty to memorize the events vary from man to man. There are always natural differences in the faculties of different individuals in the matter of observation, perception and memorization of details. So, the so called discrepancies being immaterial are not enough to disbelieve the evidence tendered by the above witnesses.

Last of all, Mr. Sharma submitted that in re: **Avtar Singh** v. **State of Haryana,** 1994 (2) Recent Criminal Reports 421, the accused was found working a Still. The sentence was reduced to the already undergone. In view of the observations made in re: **Avtar Singh** (supra), the sentence may be reduced to two months, which, he has already undergone. I have considered this submission. In that case, no independent witness was joined, whereas in the instant case, Sukhdev Singh Sarpanch was joined. Therefore, this prayer cannot be accepted in view of the heavy recovery. Of course, having regard to the fact that this incidence is about 16 years old, the sentence is reduced to six months' rigorous imprisonment while maintaining the fine as well as its default clause.

Accordingly, this revision is disposed of.

(HARBANS LAL)
JUDGE

December____, 2007

RS